

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,543  
 )  
Appeal of )

## INTRODUCTION

The petitioner applies to the Human Services Board, pursuant to 33 V.S.A. § 4916(h), for an order expunging from the child abuse registry maintained by the Department of Social and Rehabilitation Services (SRS) a report of abuse against a child in her day care.<sup>1</sup> The issue is whether the report was "substantiated" within the meaning of the pertinent statutes.

## FINDINGS OF FACT

The petitioner has operated a registered day care<sup>2</sup> in her home since 1987. On April 25, 1991, eight children were in her care. On that day, when she was outside playing with the children, two boys got into a fight. One boy, who was six years old, bit the other boy. The petitioner, with the help of an older (nine-year-old) boy, grasped the boy who had bitten the other boy and began scolding him. The six-year-old boy was kicking the petitioner, struggling to get free, and grabbed the petitioner's hair. The petitioner then bit the boy on the arm. When she did, the boy let go of her hair and went inside. The bite left a bruise on the boy's arm which

lasted more than a week.

The above recitation of facts is a bareboned outline of the evidence that was not disputed at the hearing. The petitioner maintains that she bit the boy in "self-defense" because he was hysterical and would not let go of her hair after she threatened to send him to the "quiet room". However, the nine-year-old boy who had assisted the petitioner (at the petitioner's request) in restraining the six-year-old testified that, before the six-year-old grabbed the petitioner's hair, the petitioner told the six-year-old she was going to bite him to teach him what it felt like to be bitten.

The hearing officer found this aspect of the older boy's testimony to be specific and credible. The petitioner's denials of this allegation were not credible. It is thus found that, even though the six-year-old was pulling the petitioner's hair when she bit him, her biting him was premeditated and deliberate.

The above notwithstanding, it is further found that biting was unnecessary under any circumstances for the petitioner to have protected herself from physical pain or injury. The petitioner is a young woman who appeared to be physically fit. (She did not allege any physical infirmity.) Even if her version of the events leading up to the biting is deemed credible, her claim that she had no reasonable recourse except to bite the child borders on the

preposterous. It is found that the petitioner had the physical and mental capacity to have loosened the grip of the child on her hair without resorting to biting or otherwise injuring him.<sup>3</sup>

ORDER

The petitioner's request to expunge the report of abuse from the SRS registry is denied.

REASONS

The petitioner has made application for an order expunging the record of the alleged incident of child abuse from the SRS registry. This application is governed by 33 V.S.A. § 4916 which provides in pertinent part as follows:

- (a) The commissioner of social and rehabilitation services shall maintain a registry which shall contain written records of all investigations initiated under section 4915 of this Title unless the commissioner or the commissioner's designee determines after investigation that the reported facts are unsubstantiated, in which case, after notice to the person complained about, the records shall be destroyed unless the person complained about requests within one year that it not be destroyed.

. . .

- (h) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is unsubstantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under Section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.

Pursuant to this statute, the department has the burden of establishing that a record containing a finding of child

abuse should not be expunged. The department has the burden of demonstrating by a preponderance of the evidence introduced at the hearing not only that the report is based upon accurate and reliable information, but also that the information would lead a reasonable person to believe that a child has been abused or neglected. 33 V.S.A. § 4912(10) and Fair Hearings No. 10,136, 8646, and 8110.

An "abused child" is defined by 33 V.S.A. § 4912(2) as "a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare. . ."

"Harm," as defined by paragraph (3) of the above statute, "can occur when the parent or other person responsible for his welfare: (A) Inflicts, or allows to be inflicted, upon the child, physical or mental injury. . ."

"Physical injury" is defined in paragraph (6) as "death, or permanent or temporary disfigurement, or impairment of any bodily organ or function by other than accidental means."

In this case, there is no question that the petitioner, as the child's day care provider, was "responsible for his welfare" within the meaning of the above provisions. As noted above, it is also found that the petitioner's biting of the child was neither "accidental" nor necessary as an act of "self-defense" under the circumstances. It must also be concluded that an intentionally-inflicted bite wound that leaves an observable bruise on a child's arm for more than a

week is "temporary disfigurement" resulting in "harm" to the child's "physical health" within the meaning of the pertinent provisions of 33 V.S.A. § 4912, supra.

Therefore, the decision by SRS to "substantiate" the report in question is affirmed. The petitioner's request to expunge the report from the SRS registry is denied.

FOOTNOTES

<sup>1</sup>The Department also notified the petitioner that it was revoking her Family Day Care Home Registration pursuant to 33 V.S.A. § 3503 (prohibiting "corporal punishment"). The petitioner indicated at the hearing she was not contesting this decision.

<sup>2</sup>See 33 V.S.A. § 3502.

<sup>3</sup>The hearing officer excluded from his consideration of this matter all evidence, hearsay or otherwise, offered by the Department (subject to the petitioner's objection) regarding other incidents that allegedly occurred at the petitioner's day care. It is thus unnecessary to make a specific ruling regarding the admissibility of this evidence (the Department offered it to show the petitioner's "modus operandi" in an attempt to discredit her claim of self-defense). The findings in this matter, including those as to credibility, are based solely on the evidence regarding the specific incident in question.

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